IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.7672 of 2007
Date of decision : 29.5.2007

M/s Super Tech Forgings (India) Ltd.

....Petitioner through
Mr.Ashwani Talwar,
Advocate

Versus

Uttar Haryana Bijli Vitran Nigam Limited and another

... Respondents through
Mr.Narender Hooda,
Advocate

CORAM : HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE
HON'BLE MR.JUSTICE MAHESH GROVER

....

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

...

Vijender Jain, Chief Justice (Oral)

Counsel for the respondents says that there is urgent need of the supply of Weasal Conductors as well as Dog Conductors. He stated that the copy of the counter affidavit has been supplied to the counsel for the petitioner but he could not file the same in the Registry. The same is taken on record in Court itself.

Learned counsel for the respondents has contended that the tender had been issued by the Uttar Haryana Bijli Vitran Nigam although the same had been issued for the material required by Uttar

Haryana Bijli Vitran Nigam and Dakshin Haryana Bijli Vitran Nigam. The dispute is in relation to the interpretation of Para 31 of the conditions which is to the following effect:

> "Past performance of the firm with Nigam shall be kept in view while deciding the case. The firm should have supplied 80% of ordered quantity of last P.O. in contractual delivery period."

Both the sides are reading this para in their respective favours.

According to the counsel for the petitioner, the NIT had been issued under the signatures of the Deputy General Manager of the Uttar Haryana Bijli Vitran Nigam, Panchkula which implied that his past performance is to be considered qua the supplies he had made to Uttar Haryana Bijli Vitran Nigam and not to Dakshin Haryana Bijli Vitran Nigam as is being interpreted by the respondents to foreclose his bid.

On the other hand, learned counsel for the respondents has contended that although the NIT has been issued by Uttar Haryana Bijli Vitran Nigam but it was for conductors and material used by Uttar Haryana Bijli Vitran Nigam and Dakshin Haryana Bijli Vitran Nigam and hence his performance in supplying material to Uttar Haryana Bijli Vitran Nigam becomes relevant and material.

Learned counsel for the respondents has contended that the reason for not opening the bid of the petitioner is that the P.O. dated 6.12.2004 vide which last supply was made by the petitioner to

Dakshin Haryana Bijli Vitran Nigam, 80% of the ordered quantity was not supplied to it within the delivery schedule.

We have given our careful consideration to the arguments advanced by the counsel for both the parties.

Keeping in view the fact that the conductors and other materials are required on the urgent basis, we tend to dispose off the petition as it stands in the confines of a very narrow compass.

The stand of the respondents is totally contrary to the NIT issued by them. Though it was the intention of the respondents that the purchase order issued by the Dakshin Haryana Bijli Vitran Nigam and the past performance qua supplies to it was also to be taken into consideration but the same ought to have been mentioned in the NIT which is a document determining the terms of contract which shall be the fountain head of the subsequent rights of the parties. The respondents have no right to interpret it in the manner as they have done.

There is no dispute that the petitioner against the P.O. dated 14.6.2005, which was issued by the Uttar Haryana Bijli Vitran Nigam, supplied five times more the quantity of the P.O. of Dakshin Haryana Bijli Vitran Nigam and has now completed 100% supply within the stipulated period. It is this fact which ought to have been taken into consideration by the respondents and not a factor which is not a term of the NIT either express or implied.

Therefore, we quash the order of the respondents of not opening the price bid of the petitioner. The writ petition is allowed.

The rule is made absolute.

(VIJENDER JAIN)
CHIEF JUSTICE

29.5.2007

(MAHESH GROVER)
JUDGE

dss